

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

State of Minnesota by Rebecca Lucero,
Commissioner of the Minnesota Department of
Human Rights,

Court File No. _____

Plaintiff,

SUMMONS

vs.

West Lutheran High School Association a/k/a
West Lutheran High School,

Defendant.

THIS SUMMONS IS DIRECTED TO: WEST LUTHERAN HIGH SCHOOL ASSOCIATION
A/K/A WEST LUTHERAN HIGH SCHOOL, 3350 HARBOR LANE NORTH, PLYMOUTH,
MINNESOTA 55447

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a written response called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at: 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127.

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or

disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: August 1, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Rachel Bell-Munger

RACHEL BELL-MUNGER
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RIGHTS

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

State of Minnesota by Rebecca Lucero,
Commissioner of the Minnesota Department of
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Court File No. _____

COMPLAINT

Plaintiff,

vs.

West Lutheran High School Association
a/k/a West Lutheran High School,

Defendant.

INTRODUCTION

This State of Minnesota, by Rebecca Lucero, Commissioner, Department of Human Rights, alleges that:

JURISDICTION AND VENUE

1. This Complaint is issued pursuant to Minn. Stat. § 363A.33, subd. 1 (2018).
2. The District Court has jurisdiction over this matter pursuant to Minn. Stat. § 363A.33, subd. 6 (2018).
3. Venue is proper in Hennepin County pursuant to Minn. Stat. § 363A.33, subd. 6, because the unlawful discriminatory practices discussed herein occurred in Hennepin County.

PARTIES

4. Complainant is the State of Minnesota by Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights (“MDHR”). The Commissioner is a state officer with the authority to administer and enforce the Minnesota Human Rights Act (“MHRA”), Minn. Stat.

ch. 363A, on behalf of the State of Minnesota. Minn. Stat. §§ 363A.05-.06, 363A.28. Pursuant to Minn. Stat. § 363A.33, the Commissioner is authorized to bring a civil action in state district court to seek redress for unfair discriminatory practices as defined by the MHRA.

5. Defendant is West Lutheran High School Association a/k/a West Lutheran High School (“Defendant” or “West Lutheran”). West Lutheran is located at 3350 Harbor Lane North, Plymouth, MN 55447. West Lutheran High School Association is a nonprofit corporation registered under Minn. Stat. ch. 317A. Upon information and belief, West Lutheran High School Association owns and operates West Lutheran High School. West Lutheran High School is a private or nonpublic high school. Upon information and belief, West Lutheran High School is not separately incorporated or registered as an assumed name with the Minnesota Secretary of State; and West Lutheran presents itself as “West Lutheran High School” rather than “West Lutheran High School Association” to members of the public, as well as the Minnesota Department of Education and the Minnesota Nonpublic School Accrediting Association.

FACTUAL BACKGROUND

Initial Issues With West Lutheran

6. Robert Waade’s daughter was a minor and a ninth grade student at West Lutheran High School during the 2014-15 school year.

7. Waade’s daughter chose to attend West Lutheran High School in part because of bullying she experienced in middle school from students who would be attending Orono High School.

8. On October 25, 2014, Waade’s daughter learned that a male student at West Lutheran (“MS1”) had been gossiping and saying inappropriate, harassing things about her. MS1 was a football and basketball player for West Lutheran.

9. On October 28, 2014, Waade's daughter reported to the dean of students at West Lutheran that she was being bullied and harassed by MS1. At the time, West Lutheran's dean of students coached West Lutheran's basketball team, and West Lutheran's school principal coached West Lutheran's football team.

10. MS1 initially denied but later admitted to the bullying behavior to West Lutheran officials. Defendant warned MS1 but did not discipline him.

11. On October 29, 2014, Waade's daughter reported bullying behavior by a second male student ("MS2") to Defendant's principal at a meeting. The bullying behavior took the form of text messages, Kik messages, and Facebook Messenger posts. Waade's daughter provided information to the principal about the bullying behavior and messages. The information Waade's daughter provided to the principal indicated Waade's daughter had forwarded messages back and forth between MS2 and another female student ("FS1"). Upon information and belief, the principal was more concerned about the fact or possibility of students gossiping than the content of the messages and the harassing behavior and bullying Waade's daughter reported.

12. In the October 29, 2014 meeting, Waade's daughter also reported that MS1 had cornered her in front of her school locker, attempted to reach under her dress, and touched her leg. Waade's daughter attempted to resist and pushed MS1's hands away.

13. MS1 later denied touching Waade's daughter, according to the principal. The principal instructed MS1 to stay away from Waade's daughter and directed faculty to separate them in class.

14. The principal met separately with MS2 and FS1 and told them not to participate in gossip or slander over social media.

15. On October 30, 2014, the principal held an assembly for the entire ninth-grade class and warned the entire class not to participate in gossip or bullying over social media.

16. On October 31, 2014, the principal and dean of students met with Waade, his wife, and his daughter. The principal's notes indicate that he told the Waades that involvement with gossip in the future could be cause for suspension or dismissal. Waade asked if the school would investigate the touching incident involving MS1. The principal responded that he would not investigate the incident unless Waade's daughter produced proof. The principal threatened Waade's daughter with expulsion if she initiated an investigation and the principal found that the touching had not occurred. Because it was her word against the word of MS1, Waade's daughter decided not to insist on an investigation with the principal because of her fear of expulsion.

17. Other than the actions described in paragraph 13, Defendant took no further action to investigate or conduct a school-led investigation of the touching incident involving MS1.

18. On November 13, 2014, Waade's daughter rebuffed unwanted sexual touching by a third male student ("MS3") at school while a film was being shown to her class. MS3 sent Waade's daughter text messages related to the incident.

19. On November 18, 2014, FS1 and MS3 had an argument at school. According to the principal, the students told him that Waade's daughter forwarded each of them text messages about the other student, which supposedly led to the argument. The principal spoke to the dean of students. They decided to speak with Waade's daughter, but Waade's daughter had a panic attack and left school early, before they could meet. The principal called the Waades and spoke to Rob Waade on the phone. The principal told Waade that it was not a bad thing for Waade's daughter to feel ill after doing something wrong and told Waade that Defendant would discipline

his daughter for her role in gossiping. Waade declined to allow the principal to speak with his daughter while she was ill. The principal told Waade to keep his daughter at home until he had spoken to the dean of students.

20. Defendant suspended FS1 and MS3 for one day each. MS3 received a one-day in-school suspension, and FS1 received a one-day out-of-school suspension. FS1 left West Lutheran shortly thereafter.

21. On November 19, 2014, Waade reported the November 13, 2014 touching incident involving MS3 to the principal. Waade attempted to provide more information to the principal and/or dean and show the text message MS3 sent to his daughter as proof of the incident. The principal refused to view the texts and did not want to hear more about the touching incident. The principal told Waade that Waade and his family would have to cooperate with the school to move forward and that he should keep his daughter at home for the remainder of the week. The principal refused to investigate the November 13, 2014 incident, and did not want to see or hear anything related to the incident, until he felt Waade's daughter's gossiping incident had been resolved.

22. The principal wrote a letter to Waade and his wife dated November 20, 2014. In the letter, the principal accused Waade's daughter of making up the touching incidents and suggested that the Waades remove their daughter from the school. The principal said of Waade's daughter returning home due to having a panic attack, "To me this implies guilt, which in and of itself is not a bad thing for someone who has sinned." He stated he believed that many of the things Waade's daughter accused male students of doing at school were "made up or drastically exaggerated," and he was having difficulty understanding "that if you believe what she is saying is true, why aren't you turning and running away from" the school. The principal indicated that

the following week, they would meet and the principal and dean of students planned to “hear your plan of how you will ensure her behavior will not negatively influence the culture of our school.”

23. Defendant intended to suspend Waade’s daughter for one day. In conversations with Waade, Defendant threatened to suspend Waade’s daughter indefinitely unless Waade allowed the principal to speak with his daughter. Defendant ultimately suspended Waade’s daughter for five days total; she was not told she could return to school until a meeting that occurred the following Tuesday, November 25, 2014.

24. The principal gave MS3 a one-day in-school suspension for the November 18, 2014 gossiping incident, which was served on November 20, 2014, but at the same time refused to appropriately investigate MS3’s behavior toward Waade’s daughter. Defendant’s treatment of MS3 was in stark contrast to the discipline that Waade’s daughter was in the midst of receiving.

25. On November 21, 2014, Waade again tried to show the principal the texts MS3 had sent to his daughter. The principal again declined to view them.

26. On November 24, 2014, Waade, his wife, and his daughter met with the principal. At the meeting, Waade attempted to provide evidence to the principal about the harassing behavior affecting his daughter. The principal told Waade and his family that he expected the allegations of sexual assault against MS3 would be dropped. Defendant’s record of notes from the meeting reflect that the principal determined “Text evidence does not directly support” either MS3’s defense or Waade’s daughter’s accusation, and “It is expected that this will issue be dropped.” During the meeting, the principal was combative, yelling at the Waades and repeatedly pounding his fist on his desk.

27. On or about November 25, 2014, the principal gave Waade a statement of expectations for his daughter and told Waade that he expected Waade's daughter back in school the next day.

28. On November 25, 2014, Waade and the principal went to the police department, and Waade reported the unwanted sexual touching incidents from October 29 and November 13 to the police.

29. West Lutheran's 2014-2015 student handbook states that "an investigation will begin promptly" when a sexual harassment complaint has been filed, and that the "accused student/s will be suspended while the investigation is being conducted."

30. Contrary to the sexual harassment policy contained in the handbook, West Lutheran did not take additional steps to investigate the October 29 or November 13 incidents of unwanted sexual touching. West Lutheran also did not suspend the students allegedly responsible for the October 29 or November 13 incidents for touching or harassing Waade's daughter, nor did West Lutheran suspend them pending the result of any sexual harassment investigation.

31. West Lutheran's 2014-2015 student handbook had no specific policy concerning students gossiping. The student handbook's policy on computer and internet usage stated that "Students will also be asked to be respectful of their classmates, teachers, and school in their electronic media use inside and outside of school."

32. Upon information and belief, Waade's daughter returned to school after the November 25, 2014 meeting—after a total of five days.

Subsequent Issues With West Lutheran

33. On February 12, 2015, the principal wrote to Waade regarding his daughter's progress, noting that she was doing better. He informed Waade that two male students ("MS4" and "MS5," respectively) had been gossiping and texting regarding Waade's daughter. The two male students were not disciplined or suspended. West Lutheran provided no rationale as to why those students were treated differently than Waade's daughter.

34. In April 2015, MS3 followed Waade's daughter to the bathroom and attempted to kiss her without her consent. Waade's daughter resisted, and a teacher ultimately stepped in to stop the behavior.

35. Waade's daughter contacted the Victim Services Division of the Hennepin County Attorney's Office twice in spring 2015 to report unwanted touching by MS3. Waade's daughter requested that West Lutheran's principal and dean of students not be contacted because she feared being expelled. The victim services liaison contacted West Lutheran's principal and informed him of the incidents.

36. On April 14, 2015, Waade called a liaison teacher to report that MS3 had been kicking his daughter's chair and poking her in class on April 13, 2015, and that MS3 had grabbed his daughter and tried to hug and kiss her in the hallway on April 14, 2015.

37. On April 15, 2015, the principal met with MS3 and told him not to interact with Waade's daughter for the remainder of the school year. MS3 apparently denied grabbing and trying to hug and kiss Waade's daughter. MS3 was not disciplined or suspended.

38. The same day, the principal met with two teachers, who reportedly said that MS3 would have to go out of his way to have contact with Waade's daughter in their classrooms. The principal apparently interpreted this to mean that Waade's daughter was lying about the

unwanted touching and behavior in the classroom, as well as the unwanted touching in the hallway.

39. Later that day, the principal contacted Waade. The principal told him no evidence supported his daughter's claim and he doubted she was being truthful. The principal asked that Waade transfer his daughter to a different school. Waade refused.

40. On August 13, 2015, the principal sent Waade a letter informing him that his daughter could not return to West Lutheran for the upcoming school year.

41. Because of the late notification by Defendant that Waade's daughter could not attend school in the fall, Waade's daughter was forced to enroll at Orono High School.

42. The bullying that Waade's daughter previously endured while in middle school continued at Orono High School. In fact, Waade's daughter removed herself from school for a portion of her senior year and chose to take online classes because of the totality of the stress and anxiety she experienced because of Defendant's treatment of her and the continued bullying at Orono High School.

43. Waade and his daughter experienced significant mental and emotional distress because of their experience with how Defendant treated Waade's daughter's.

44. On November 17, 2015, Waade, on-behalf-of his then minor child, filed a charge of discrimination with MDHR alleging Defendant discriminated against Waade's daughter based on her sex in the areas of education and reprisal.

45. MDHR staff conducted an investigation of the charge.

46. In February 2018, the Commissioner determined that probable cause existed to believe that discrimination had occurred.

COUNT I
SEX DISCRIMINATION (MINN. STAT. § 363A.13)

47. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference.

48. Minnesota Statutes section 363A.13, subdivision 1 states that it is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person, because of the person's sex.

49. Under the MHRA, discrimination based on sex includes sexual harassment. Minn. Stat. § 363A.03, subd. 13. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature when the conduct has the purpose or effect of substantially interfering with an individual's education or creates an intimidating, hostile, or offensive educational environment. *Id.*, subd. 43.

50. An educational institution is "a public or private institution," which includes a secondary school. Minn. Stat. § 363A.03, subd. 14. Defendant West Lutheran is an educational institution covered by the MHRA.

51. The MHRA grants certain exemptions to religious organizations, including religious or denominational educational institutions, none of which apply to West Lutheran's treatment of Waade's daughter.

52. West Lutheran's principal and dean of students had actual notice of sexually harassing and inappropriate behavior toward Waade's daughter and acted with deliberate indifference when made aware of that behavior. The harassing and inappropriate behavior toward Waade's daughter was severe, pervasive, and offensive enough that it affected her access to education at West Lutheran and created an intimidating, hostile, and offensive educational environment—an environment that continued and endured after the Waades attempted to report behavior. West Lutheran's deliberate indifference, which allowed such behaviors to continue, is underscored by the fact that it refused to follow its own policies after Waade's daughter accused fellow students of unwanted sexual touching and sexual harassment. West Lutheran's leadership did not take Waade's daughter's reports seriously and created an intimidating and hostile environment that discouraged Waade's daughter from reporting harassing behavior to school officials.

53. As a result of Defendant's actions and deliberate indifference, Waade's daughter suffered harm as described in this Complaint.

COUNT II
DIFFERENTIAL TREATMENT (MINN. STAT. § 363A.13)

54. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference.

55. It is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person, because of the person's sex; and to exclude, expel, or otherwise discriminate against a person enrolled as a student or seeking admission because of sex. Minn. Stat. § 363A.13.

56. West Lutheran suspended Waade's daughter for "gossiping" via text and social media. Presented with similar and arguably more offensive behavior by male students, West Lutheran either did not discipline the students or the students received lighter punishments.

57. Waade's daughter stated a prima facie differential treatment claim because as a female, Waade's daughter is a member of a protected class. Waade's daughter was a student at West Lutheran. She was denied the full utilization of or benefit from West Lutheran and West Lutheran's services during her suspension, and received differential disciplinary treatment than similarly-situated male students. West Lutheran required her to stay home and lengthened the duration of her suspension, which differed from the discipline imposed on male students who were similarly situated and occurred when the Waades reported sexual harassment and bullying behavior.

58. West Lutheran also refused to suspend male students who were accused of unwanted sexual touching, contravening its own policy, which required suspension when reports of sexual harassment are investigated.

59. West Lutheran imposed a disproportionately harsh discipline on a female student in comparison with male students.

60. As a result of Defendant's actions, Waade's daughter suffered harm as described in this Complaint.

COUNT III
REPRISAL (MINN. STAT. § 363A.15)

61. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference.

62. Minnesota Statutes section 363A.15 states that it is an unfair discriminatory practice for any individual who participated in alleged discrimination as an educational

institution or agent thereof to intentionally engage in any reprisal against any person because the person opposed a practice forbidden under Minn. Stat. ch. 363A.

63. Reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. Minn. Stat. § 363A.15.

64. Waade and his daughter were engaged in statutorily protected activities when they opposed and reported sexual harassment and harassing behaviors at West Lutheran.

65. West Lutheran suspended Waade's daughter and increased the duration of that suspension after she and Waade reported instances of unwanted sexual touching in 2014.

66. West Lutheran refused to allow Waade's daughter to re-enroll at the school in the fall of 2015. During the 2014-2015 school year, West Lutheran leadership indicated on more than occasion that Waade's daughter should not re-enroll at the school and could not understand why the Waades would want to send their daughter to the school if her reports of sexual harassment were true. West Lutheran leadership made such statements when the Waades reported sexual harassment to school leadership.

67. West Lutheran contravened its own policy in its suspension of Waade's daughter and in its refusal to either investigate or suspend the male students who allegedly engaged in harassment and unwanted sexual touching of Waade's daughter.

68. West Lutheran's decision to prohibit Waade's daughter from re-enrolling was based on Waade and his daughter's reporting of and opposition to sexual harassment at West Lutheran.

69. West Lutheran's conduct in suspending and increasing the duration of Waade's daughter's suspension, and in refusing to allow Waade's daughter to re-enroll for the fall of 2015, constitutes acts of reprisal in violation of the MHRA.

70. As a result of Defendant's actions, Waade's daughter suffered harm as described in this Complaint.

RELIEF

The District Court has the authority to issue any relief authorized by Minn. Stat. § 363A.33. The Commissioner, therefore, requests that the Court grants the following relief:

1. Enter an order, pursuant to Minn. Stat. § 363A.29, subd. 3, finding that West Lutheran violated Minn. Stat. §§ 363A.13 and 363A.15.

2. Enter an order requiring West Lutheran to compensate Waade and his daughter in an amount up to three times the actual damages sustained as well as damages for mental anguish and suffering, pursuant to Minn. Stat. § 363A.29, subd. 4. Notice is provided that reasonable damages may be greater than \$50,000, pursuant to Minn. R. Civ. P. 8.01.

3. Enter an order requiring West Lutheran to pay a civil penalty to the State of Minnesota, pursuant to Minn. Stat. § 363A.29, subd. 4.

4. Enter an order requiring West Lutheran employees to undergo training on sexual harassment and differential treatment that is approved by MDHR, pursuant to Minn. Stat. § 363A.29, subd. 3.

5. Enter an order pursuant to Minn. Stat. § 363A.29, subd. 3, requiring West Lutheran to submit reports at least quarterly regarding student discipline, including reports of sexual harassment, sexual assault, or bullying where West Lutheran chooses not to investigate, suspend, or otherwise discipline the alleged perpetrator.

6. Order West Lutheran to reimburse the Commissioner and the Minnesota Attorney General's Office for all appropriate investigation, litigation, and hearing costs expended in preparing for and conducting the hearing pursuant to Minn. Stat. § 363A.33, subd. 7.

7. Award such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Commissioner of the Minnesota Department of Human Rights demands a jury trial on all counts and issues so triable.

Dated: August 1, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Rachel Bell-Munger
RACHEL BELL-MUNGER
Assistant Attorney General
Atty. Reg. No. 0395962

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ATTORNEY FOR PLAINTIFF
COMMISSIONER REBECCA LUCERO,
MINNESOTA DEPARTMENT OF HUMAN
RIGHTS

**MINN. STAT. § 549.211
ACKNOWLEDGMENT**

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2018).

Dated: August 1, 2019

Respectfully submitted,

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Attorney General
State of Minnesota

/s/ Rachel Bell-Munger
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